IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 165 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ARJANBHAI SAMJI BHAGAT

Versus

GUJARAT ELECTRICITY BOARD THRO'DEPUTY ENGINEER

Appearance:

MR JC VYAS for Petitioner

NOTICE SERVED for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 12/01/2001

ORAL JUDGEMENT

1. The petitioner is the plaintiff No.1 of Civil Suit No.58 of 1996, which is pending in the Court of Civil Judge (J.D.), Nakhatrana, Kutch. The aforesaid suit has been filed by the plaintiffs for a declaration and injunction with regard to the land hearing Survey

No.416, situated in Village Manjal. Opponent No.2 herein had applied before the respondent No.1 for getting electricity connection by producing false revenue record. That the respondent No.2 is the owner of some other land, which is bearing Survey No.368. The said fact came to the knowledge of the plaintiff No.1 when the Officers of the respondent No.1 came to make survey of the land bearing Survey No.416, which, according to the plaintiff No.1, belongs to the petitioner and the respondent No.3 herein jointly. The petitioner herein has also filed separate application Exhibit 5 for interim injunction as regards the disputed property. It is prayed in the said application that the defendant No.1 may be restrained from giving any electricity connection and inducting D.P. on Survey No.416, which, according to the plaintiff No.1, belongs to him jointly with respondent No.3 herein, who is original plaintiff No.2 in the suit.

2. At this stage, we are not concerned with the merits of the controversy between the parties, as, according to the Advocate for plaintiff No.1, Exhibit 5 might still be pending, though he is not very much sure whether it is decided one way or other at this stage or not.

3. In the aforesaid proceedings, application Exhibit 26 was given by defendant No.2, wherein he has stated that so far as Survey No.416 is concerned, it was having old Survey No.367 and that property originally belonged to one Ambalal Hirjibhai Patel and that defendant No.2 has purchased the same for Rs.1,800/- and that he dug a well on the said land and he has put up oil engine and from that well, he is taking water to Survey Nos.419/1 and 419/2 through pipeline. He, therefore, prayed that in order to find out all these factual things, it is necessary that local inspection of the said plots is made through a Court Commissioner. He accordingly gave an application for appointment of a Commissioner for visiting the site.

4. The learned trial Judge, after hearing rival parties, passed an order for appointment of Court Commissioner for finding out the number of wells in Survey No.416 (old Survey No.367) and to find out the irrigation facilities available to the nearby agricultural lands. The aforesaid order of the learned trial Judge, appointing Court Commissioner for the aforesaid purpose, is challenged by the original plaintiff No.1 in this Revision Application.

5. It was argued by Mr.Vyas for the petitioner that

the order in question is without jurisdiction because no Court Commissioner can be appointed for surveying the property of the present plaintiff No.1. He also further argued that no Court Commissioner can be appointed for the purpose of collecting evidence.

6. After hearing Mr.Vyas for the petitioner and after going through the application of the defendant No.2 as well as the order of the trial court, I am of the opinion that this Revision Application is misconceived. As such, looking to the order, it cannot be said that the Court Commissioner is appointed for collecting evidence. Here, the defendant No.2 has disputed the title of the plaintiffs regarding Survey No.416. In order to find out whether any electric Engine is fitted on the well in Survey No.416, the Court thought it fit to get inspection of the local place and only for that limited purpose, Commissioner has been appointed. The trial court has found that in order to decide Exhibit 5, it is necessary to have material by local inspection of the record. It cannot, therefore, be said that, in the instant case, the Commissioner is appointed for collecting evidence. No rights of defendant No.2 are going to be decided only on the basis of such Panchnama on record. Only in order to find out whether any particular oil engine is there or not and whether any irrigation facility is available to the other agricultural land or not, the Court Commissioner is appointed. However, it is clarified that it will be open for the plaintiff to file any objection against the report of the Commissioner. The Court Commissioner may inspect the site in the presence of the concerned parties after giving due notice. It will be open for the plaintiff to file objection to the report of the Commissioner, if there is any objection on their part. It cannot be said that even if there is some oil engine in the land bearing Survey No.416, the Court is going to decide the question of title in favour of defendant No.2. Even that may not be a substantive piece of evidence. This order is passed by the trial court only in order to facilitate the court to decide Exhibit 5 effectively. It is clarified that the learned Judge, while deciding Exhibit 5 application, if at all the same is not at all decided by this time, will also consider the other material on record and the affidavit of the parties and other piece of evidence and this particular Panchnama may not be treated as substantive piece of evidence. The Panchnama in question can be taken into consideration for effectively adjudicating Exhibit 5. It is clarified that so far as the question of title is concerned, the same will be required to be decided in the suit by considering independent evidence on record and

even if some engine is found on the said Survey No.416, that itself should not be treated as a conclusive piece of evidence to decide the title in favour of defendant No.2. I do not find any substance in this Revision Application. It cannot be said that the learned trial Judge has committed any error of jurisdiction in passing the impugned order. This Revision Application is accordingly dismissed. Rule is discharged with no order as to costs. Interim relief is vacated.

12th January, 2001 (P.B. Majmudar, J.)

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(apj)